

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANHO CORPORATION,

Plaintiff,

v.

CIMO TECHNOLOGIES, INC.,

Defendant.

No. C 11-2473 PJH

**ORDER DENYING MOTION FOR
ATTORNEY'S FEES**

Before the court is the motion of plaintiff Sanho Corporation ("Sanho") for the imposition of sanctions pursuant to the court's inherent power, against defendant CIMO Technologies, Inc. ("CIMO"). Sanho seeks attorney's fees in the amount of \$38,715, the amount it claims it incurred in this action in connection with the preparation and filing of a request for entry of default and a motion for default judgment, and an opposition to a motion to vacate the entry of default.

A court may assess attorney's fees under its inherent power when a party has acted in bad faith, vexatiously, or wantonly, or for oppressive reasons – as when the court finds that the party has practiced fraud upon the court, or has unduly disrupted the litigation or hampered enforcement of a court order. In re DeVille, 361 F.3d 539, 544 (9th Cir. 2004) (citing Chambers v. NASCO, 501 U.S. 32, 45-46 (1991)); see also Roadway Express, Inc. v. Piper, 447 U.S. 752, 767 (1980) (conduct that is "tantamount to bad faith" is sanctionable).

"Sanctions are available for a variety of types of willful actions, including recklessness when combined with an additional factor such as frivolousness, harassment, or an improper purpose." B.K.B. v. Maui Police Dept., 276 F.3d 1091, 1108 (9th Cir. 2002)

(quotations and citations omitted). To treat a failure to respond to a complaint as culpable, the court must find that the movant acted with bad faith, or that the default cannot be explained as anything other than a “devious, deliberate, willful, or bad faith failure to respond.” See TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 697-99 (9th Cir. 2001).

Here, the court does not find that CIMO’s failure to respond to the complaint can be considered “culpable” in the sense stated above. Accordingly, the court finds that sanctions in the form of attorney’s fees are not warranted. The motion is DENIED.

IT IS SO ORDERED.

Dated: July 19, 2012



PHYLLIS J. HAMILTON
United States District Judge